Evans

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Young-Robinson Associates, Inc.

File: B-242868

Date: February 12, 1991

Theresa L. Watson, Esq., for the protester.
Catherine M. Evans, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where protest allegations do not establish likelihood that agency's decision was contrary to applicable regulations, protest of decision to conduct procurement as small business set-aside instead of small disadvantaged business set-aside is dismissed for failure to set forth a legally sufficient basis of protest as required by General Accounting Office Bid Protest Regulations.

DECISION

Young-Robinson Associates, Inc. (YRA), a small disadvantaged business (SDB), protests the Department of the Air Force's decision to issue request for proposals (RFP) No. F01600-91-R-0016 as a small business set-aside rather than as an SDB set-aside.

We dismiss the protest.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4) (1990), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Professional Med. Prods., Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2. The decision to conduct a particular procurement as an SDB or a small business set-aside is a business judgment within the discretion of the contracting officer, which we will not disturb unless there has been a clear showing of an abuse of that discretion. Commercial Energies, Inc., B-234789, July 12, 1989, 89-2 CPD ¶ 40. Thus, where a protester contends that an agency improperly failed to set a procurement aside for SDBs, in order to meet our standard for specificity the protester must

allege facts sufficient to establish the likelihood that the agency's decision amounted to an abuse of discretion.

YRA appears to be arguing that its successful performance of certain tasks included in the RFP under a prior contract requires the Air Force to set the procurement aside for SDBs. The applicable regulations contain no such requirement. The Department of Defense Federal Acquisition Regulation Supplement (DFARS) provides that a procurement shall be set aside for exclusive SDB participation if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible SDB concerns, and (2) award will be made at a price not exceeding the fair market price by more than 10 percent. DFARS § 219.502-72(a). The DFARS also states that the contracting officer should presume that these requirements are met if the acquisition history shows that: (1) within the past 12-month period, a responsive offer from at least one responsible SDB concern was within 10 percent of an award price on a previous procurement of similar supplies or services, and (2) the contracting officer has reason to know that there is at least one other responsible SDB source of similar supplies or services. DFARS § 219.502-72(c).

YRA concedes that the RFP here includes services that YRA did not perform under its previous contract; thus, the fact that YRA performed that contract successfully would not compel a presumption by the contracting officer that the prerequisites for an SDB set-aside have been met for this procurement. Further, YRA has alleged neither that there is more than one SDB concern that can provide the required services, nor that it can offer a price not exceeding the fair market price by more than 10 percent. Rather, YRA seems to argue that the SDB set-aside is warranted due to YRA's current SDB contract; this, of course, is not the applicable standard. We conclude that YRA has failed to establish the likelihood that the agency's decision was improper under the above standard.

The protest is dismissed.

John M. Melody
Assistant General Counsel